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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C.

*In the Matters of*

GENUITY TELECOM INC.

*Assignor and Transferor,*

and

LEVEL 3 COMMUNICATIONS, LLC,

*Assignee and Transferee,*

Application to Assign Telecommunications  
Carrier Assets and International Section 214  
Authority for Provision of Global Facilities-  
Based and Global Resale Services, and to  
Transfer Control of Domestic Common Carrier  
Transmission Lines Pursuant to Section 214 of  
the Communications Act of 1934, as Amended

File No. ITC-ASG-200212\_\_-\_\_

WC Docket No. 02-385

**JOINT APPLICATION**

Pursuant to Section 214 of the Communications Act of 1934, as amended (the “Act”),<sup>1</sup> and Sections 63.04 and 63.18(e)(3) of the Commission’s rules,<sup>2</sup> Genuity Telecom Inc. (“Telecom”), a wholly-owned subsidiary of Genuity Inc. (“Genuity”), and Level 3 Communications, LLC (“Level 3” and, collectively, the “Parties”),<sup>3</sup> request that the Commission consent to the assignment and transfer to Level 3 of substantially all of Telecom’s

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<sup>1</sup> See 47 U.S.C. § 214

<sup>2</sup> See 47 C.F.R. §§ 63.04, 63.18(e)(3)

<sup>3</sup> Concurrent with this application, the Parties have also filed the following related applications: (1) an application to assign an Industrial/Business Pool, Conventional license

telecommunications carrier assets including: (1) Telecom's U.S. customer base for domestic and international telecommunications services; (2) Telecom's international Section 214 authorization for global facilities-based and global resale services; and (3) Telecom's domestic common carrier transmission lines.<sup>4</sup> In the event that any of Telecom's international common carrier customers are not transferred to Level 3, Telecom requests residual authority to continue serving those customers. This joint application qualifies for presumptive streamlined processing under Sections 63.03(b) and 63.12 of the Commission's rules, and the Parties therefore request such streamlined processing.<sup>5</sup>

## I. BACKGROUND AND DESCRIPTION OF PROPOSED TRANSACTION

Telccom, a Delaware corporation, is a wholly-owned subsidiary of Genuity. Telecom is an interexchange carrier that provides private line and other interstate services throughout the United States. Genuity, also a Delaware corporation, is headquartered in Woburn, Massachusetts. Genuity provides enterprise IP networking services, combining its Tier 1 network with a full portfolio of managed Internet services. Less than 10 percent of Genuity's revenues are derived from Telecom, Genuity's only provider of telecommunications services in the United States.

Level 3, a Delaware limited liability company, is headquartered in Broomfield, Colorado, and is engaged in the provision of domestic and international communications and information

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from Telecom to Level 3; and (2) an application to assign two Microwave Industrial/Business Pool licenses from Genuity Solutions Inc. ("Solutions") to Level 3

<sup>4</sup> The Parties have filed this application pursuant to Section 63.04(b) of the Commission's rules, 47 C.F.R. § 63.04(b), which allows applicants to file a joint transfer and/or assignment applications for domestic and international Section 214 authorizations. *See also Implementation of Further Streamlining Measures for Domestic Section 214 Authorizations, Report and Order*, 17 FCC Rcd. 5517 (2002).

<sup>5</sup> See 47 C.F.R. §§ 63.03, 63.12

services. Level 3 is an indirect, wholly-owned subsidiary of Level 3 Communications, Inc., a global communications and information services company that offers a wide range of communications services over its 20,000 mile broadband fiber optic network, including Internet Protocol (IP) services, broadband transport, collocation services, and patented Softswitch-based managed modem and voice services. Level 3 Communications, Inc., also holds a noncontrolling, 10-percent-or-greater indirect interest in Commonwealth Telephone Enterprises, Inc. (“Commonwealth”), an incumbent local exchange carrier (“LEC”) in Pennsylvania.

On November 27, 2002, Genuity, certain Genuity subsidiaries (including Telecom), Level 3 Communications, Inc., and Level 3 entered into an Asset Purchase Agreement (“Agreement”)<sup>6</sup> to allow Level 3 to acquire substantially all of Genuity’s assets, including Telecom’s U.S. customer base for domestic and international telecommunications services, Telecom’s international Section 214 authorization for global facilities-based and global resale services, and Telecom’s domestic common carrier transmission lines. A substantial portion of the Genuity assets to be acquired by Level 3 under the Agreement are neither U.S. customers for common carrier services nor common carrier transmission lines, and their assignment and transfer is therefore not subject to Commission approval pursuant to Section 214 of the Act. Under the terms of the Agreement, Level 3 will provide service to Genuity’s existing customers, and will operate the Genuity facilities transferred to Level 3, ensuring a seamless transition for Genuity’s customers. To the extent that Telecom does not transfer to Level 3 at closing all of its existing common carrier customers, Telecom will continue to provide service to those customers, if any, pending the filing and FCC approval of subsequent Section 214 discontinuance

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<sup>6</sup> A copy of the Agreement is attached as Exhibit A to this application.

applications for domestic and international services.’. Also on November 27, 2002, to facilitate the transaction, Genuity and Telecom (along with certain other Genuity subsidiaries) filed for bankruptcy protection under Chapter 11 of the U.S. Bankruptcy Code and entered debtor-in-possession status.<sup>8</sup>

Level 3’s acquisition of Genuity’s assets will strengthen and expand Level 3’s customer service offerings and networks. The acquisition also will allow Level 3 to compete more effectively with its competitors. Accordingly, approval of this assignment and transfer application will serve the public interest, convenience, and necessity.

## **II. MARKET ANALYSIS**

### **A. LOCAL EXCHANGE AND EXCHANGE ACCESS SERVICES**

Neither of the Genuity subsidiaries — Telecom or Solutions — provides any exchange access services nor is either certificated to provide local exchange service in any state. Thus, the proposed transaction has no impact on any participant’s share of the local exchange and exchange access segment. Level 3 is a miniscule participant in local exchange and exchange access markets. Even if all the communications revenue reported in Level 3’s IO-K for 2001 were local exchange and exchange access (which it is not), Level 3’s revenues would account for less than one percent of all nationwide local exchange and exchange access revenues.’

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<sup>7</sup> Telecom will also retain responsibility for any other common carrier assets (including facilities) not transferred to Level 3, pending appropriate disposition through the Bankruptcy Court.

<sup>8</sup> On November 27, 2002, Genuity notified the Commission in a *pro forma* filing that both Genuity and Telecom entered debtor-in-possession status as a result of their bankruptcy filings on November 27, 2002. *See* Notification of *Pro Forma* Transfer of Control of International and Domestic Section 214 Authorizations of Genuity Telecom Inc. from Genuity Inc. to Genuity Inc., Debtor-in-Possession (Nov. 27, 2002).

<sup>9</sup> This figure is derived by backing Level 3’s interexchange revenue (see note 5) and reciprocal compensation revenue out from the \$1.298 billion in communications revenue shown in Item 7 of Level 3’s 10K for 2001 and comparing the remaining one billion dollars to the 131 billion dollars in total revenue for all LECs and other local service providers. FCC, STATISTICS OF COMMUNICATIONS COMMON CARRIERS, at 207, Tbl. 5.13 (2001-2002 ed.).

Moreover, Level 3 provides service only in areas served by dominant incumbent LECs. No affiliate of Level 3—other than Commonwealth—is a dominant carrier, and Level 3 provides no local exchange or exchange access services in the areas served by Commonwealth.

**B. INTERSTATE INTEREXCHANGE SERVICES**

Both Telecom and Level 3 are insignificant participants in the market for interexchange services.<sup>10</sup> In 2001, Telecom's interexchange revenues, generated primarily in the highly competitive private line service sector, were less than \$100 million. Level 3's interexchange revenues in 2001 were slightly over \$160 million.<sup>11</sup> By comparison, total toll revenues for all interexchange carriers ("IXCs") in 2001 were over \$79 billion, and total revenues for all non-LEC, non-wireless toll service providers were over \$93 billion.<sup>12</sup> Thus, the combined interexchange revenues of Level 3 and Telecom amount to no more than one-third of one percent of total interexchange revenues, and even less if all non-LEC, non-wireless toll services are considered.

**III. INFORMATION REQUIRED BY SECTION 63.18 OF THE COMMISSION'S RULES REGARDING THE ASSIGNMENT TO LEVEL 3 OF TELECOM'S INTERNATIONAL SECTION 214 AUTHORIZATION FOR GLOBAL FACILITIES-BASED AND GLOBAL RESALE SERVICES**

The following is provided under Section 63.18 of the Commission's rules in support of the Parties' request for consent to assign Telecom's international Section 214 global authorization to Level 3:

- (a) The name, address, and telephone number of the Parties are:

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<sup>10</sup> Solutions is not a common carrier.

<sup>11</sup> *Id.* at 4, Tbl. 1.2.

<sup>12</sup> *Id.* at 207, Tbl. 5.13. The category of toll service providers is comprised of IXCs, operator service providers, prepaid calling card providers, satellite service carriers, toll resellers and toll carriers. *Id.*

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FRN No. 0005183868

Assignee/Transferee

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Broomfield, Colorado 80021  
+1 720 888 2516

FRN No. 0008085136

(b) Telecom is a corporation organized under the laws of the State of Delaware.

Level 3 is a limited liability company also organized under the laws of the State of Delaware.

(c) Correspondence concerning this application should be sent to:

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*Counsel for Level 3 Communications, LLC*

(d) Telecom holds the following Section 214 authorizations:”

- (1) ITC-214-19990708-00391 (Section 214 authorization to provide global facilities-based service and global resale services).’<sup>13</sup>
- (2) Domestic blanket Section 214 authorization.”

The Commission has previously granted to Level 3 international Section 214 authority to provide global facilities-based and global resale services between the United States and

<sup>13</sup> Telecom additionally holds the following international Section 214 authorizations, which Telecom intends to relinquish at the appropriate time it completes the winding up of its business: (1) File No. ITC-95-443 (granting international Section 214 authority to resell international public switched services of unaffiliated U.S. international facilities-based carriers and provide facilities-based international private line services to all points except the Dominican Republic and Venezuela), *granted in GTE Telecom Incorporated, Order, Authorization and Certificate*, 12 FCC Rcd. 15,939 (Int’l Bur. 1996); (2) File No. ITC-94-237/ITC-94-357-TC (granting international Section 214 authority to lease terrestrial facilities for two-way service to Canada and resale of non-interconnected international private line services between the U.S. and Canada), *granted in GTE Telecom Incorporated, Order, Authorization and Certificate*, 9 FCC Rcd. 3356 (Com. Car. Bur. 1994); (3) File No. ITC-214-19960604-00226 (ITC-96-313) (granting international Section 214 authority to provide facilities-based international switched and private line services and resold non-interconnected private line services to Venezuela), *granted in GTE Telecom Incorporated*, 13 FCC Rcd. 4378 (Int’l Bur. 1998); (4) File No. ITC-214-19960604-00227 (ITC-96-314) (granting international Section 214 authority to provide facilities-based and private line services and resold non-interconnected private line services to the Dominican Republic), *granted in GTE Telecom Incorporated, Order, Authorization and Certificate*, 13 FCC Rcd. 4378 (Int’l Bur. 1998); (5) File No. ITC-214-19970804-00462 (ITC-97-438) (granting international Section 214 authority to provide limited global facilities-based and global resale services to countries not served by an affiliated foreign carrier of GTE Corporation), *granted in Public Notice*, 13 FCC Rcd. 5944 (Int’l Bur. 1997); and (6) File Nos. ITC-98-342/ITC-98-342A (granting international Section 214 authority to construct, acquire, and operate Americas-II cable capacity), *granted in AT&T Corp. et al., Memorandum Opinion, Order and Authorization*, 13 FCC Rcd. 22,534 (Int’l Bur. 1998). These authorizations were all transferred to Genuity in connection with Bell Atlantic Corporation’s acquisition of GTE Corporation. See *GTE Corporation, Memorandum Opinion and Order*, 15 FCC Rcd. 14,032 (2000).

<sup>14</sup> See FCC Public Notice, International Authorizations Granted, 15 FCC Rcd. 6810 (Int’l Bur. 1999); File No. ITC-214-19990708-00391.

<sup>15</sup> See 47 C.F.R. § 63.03; see also FCC Public Notice, *Commission Seeks Comment on Additional Filings Submitted by Bell Atlantic Corporation and GTE Corporation*, 15 FCC Rcd. 23,363 (2000) (noting domestic blanket Section 214 authorization being transferred to Genuity).

international points.<sup>16</sup> The Commission has not regulated Level 3 as dominant for the provision of services on any international route.

(e)(3) The Parties seek Commission consent to assign the international Section 214 global authorization listed in Section II(d) above

(f) No response is required.

(g) No response is required.

(h) Level 3 is a wholly-owned subsidiary of (i)Structure, Inc. (“(i)Structure”), a Delaware corporation engaged in the business of providing managed IT infrastructure services across a variety of platforms. (i)Structure’s address is 1025 Eldorado Boulevard, Broomfield, Colorado 80021. (i)Structure, in turn, is a wholly owned subsidiary of Level 3 Communications, Inc., a Delaware corporation. The address of Level 3 Communications, Inc., is 1025 Eldorado Boulevard, Broomfield, Colorado 80021. No other entity or person holds a ten-percent-or-greater direct or indirect interest in Level 3 Communications, Inc., or its wholly owned subsidiaries. Level 3 has the following interlocking directorates with foreign carriers:

- R. Douglas Bradbury, who is Chairman, Executive Vice President, and a Manager of Level 3, is also a Director of Level 3 Communications S.A.(Belgium), Vice President and Treasurer of Level 3 (Bermuda) Limited, a Director, Executive Vice President, and Chief Financial Officer of Level 3 Communications S.A. (France), a Director of Level 3 Communications GmbH (Germany), a Director of Level 3 Communications B.V. (Netherlands), and Director of Level 3 Communications Limited (UK);

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<sup>16</sup> See FCC Public Notice, *Overseas Common Carrier Section 214 Applications Actions Taken*, 13 FCC Rcd. 3098,3101 (Int’l Bur. 1998); File No. ITC-214-19971229-00821 (previously File No. ITC-98-016).



- Thomas C. Stortz, who is Secretary, Group Vice President, and a Manager of Level 3, is also a Director of Level 3 Communications S.A. (Belgium), a Director of Level 3 (Bennuda) Limited, Senior Vice President and General Counsel of Level 3 Communications S.A. (France), a Director of Level 3 Communications GmbH (Germany), a Director of Level 3 Communications B.V. (Netherlands), a Director of Level 3 Communications, AG (Switzerland), and a Director of Level 3 Communications Limited (UK);
- Stephen C. Liddell, who is a Group Vice President of Level 3, is also a Director of Level 3 (Bermuda) Limited;
- Brian Hedlund, who is an Assistant Secretary of Level 3, is also Assistant Secretary of Level 3 (Bermuda) Limited, a Secretary of Level 3 Communications AG (Switzerland), and a Secretary of Level 3 Communications Limited (UK); and
- Andrew E. Ottinger, Jr., who is Vice President of Level 3, is also a Director of Level 3 (Bermuda) Limited, a Secretary of Level 3 Communications AG (Switzerland), Secretary of Level 3 Communications Limited (UK).

(i) By the attached certification, Level 3 certifies that it is affiliated with the following foreign carriers: (1) Level 3 Communications S.A. (Belgium); (2) Level 3 Communications S.A. (France); (3) Level 3 Communications GmbH (Germany); (4) Level 3 Communications B.V. (the Netherlands); (5) Level 3 Communications AG (Switzerland); and (6) Level 3 Communications Limited (United Kingdom) (collectively, the “Foreign Carrier Affiliates”). All of these Foreign Carrier Affiliates are located in destination markets that are World Trade Organization (“WTO”) Members.”

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<sup>17</sup> See Foreign Carrier Affiliation Notification of Level 3 Communications, LLC, File No. FCN-NEW-20000214-00006 (Feb. 14, 2000); FCC Public Notice, *Foreign Carrier Affiliation Notification*, Rep. No. FCN-00015 (Feb. 24, 2000). Level 3 had previously notified the Commission that it was affiliated with carriers in Hong Kong and Japan. But those previously foreign affiliated carriers—Level 3 Communications (Hong Kong) Ltd. and Level 3 Communications (Japan) Ltd.—were sold, and associated licenses transferred, to subsidiaries of Reach Global Networks Limited, none of which is affiliated with Level 3 Communications, LLC. See Press Release, Level 3 Communications, Inc., Reach Acquires Level 3’s Asian Business (Dec. 19, 2001) (*available at* <http://www.level3.com/press/1872.html>).

(j) By the attached certification, Level 3 certifies that it seeks to provide international telecommunications services from the United States to the destination countries listed in Paragraph (i) above in which an entity that owns more than 25 percent of, or controls, Level 3 controls a foreign carrier in that country.

(k) The destination foreign countries listed in Paragraph (i) above are all WTO Members. In addition, the Foreign Carrier Affiliates each lack market power in these destination foreign countries.

(l) On routes between the United States and the foreign countries identified in Paragraph (i) above, the Foreign Carrier Affiliates satisfy the requirement of Section 63.10(a)(3) of the Commission's rules.<sup>18</sup> Each Foreign Carrier Affiliate holds significantly less than a 50-percent market share in the international transport and local access markets in its respective country. Moreover, no Foreign Carrier Affiliate has any ability to discriminate against unaffiliated U.S. international carriers through the control of bottleneck services or facilities in its respective international market. Accordingly, each Foreign Carrier Affiliate is presumed to lack sufficient market power on the international end of the route to affect competition adversely in the U.S. market.

(m) Level 3 qualifies for non-dominant status for all foreign routes based upon the information set forth in Paragraph (l) above.

(n) By the attached certification, Level 3 certifies that it has not agreed to accept special concessions directly or indirectly from any foreign carrier with respect to any U.S. international route where the foreign carrier possesses market power on the foreign end of the route and will not enter into any such agreements in the future.

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<sup>18</sup> See 47 C.F.R. § 63.10(a)(3)

(o) By the attached certification, Level 3 certifies that no party to this application is subject to a denial of federal benefits under Section 5301 of the Anti-Drug Abuse Act of 1988, as amended.”

(p) The Parties seek streamlined processing of this request for consent to assign Telecom’s international Section 214 global authorization under Section 63.12 of the Commission’s rules because: (1) the destination markets of the Foreign Carrier Affiliates listed in paragraph (i) above are each in a WTO Member country and, as demonstrated in (l) above, each Foreign Carrier Affiliate lacks sufficient market power to affect competition adversely in the U.S. market; and (2) Level 3 is not affiliated with a dominant U.S. carrier

**IV. INFORMATION REQUIRED BY SECTION 63.04 OF THE COMMISSION’S RULES REGARDING THE TRANSFER OF CONTROL OF TELECOM’S BLANKET DOMESTIC SECTION 214 AUTHORIZATION TO LEVEL 3**

In support of the Parties’ request for consent to transfer control of Telecom’s blanket domestic Section 214 authorization to Level 3, the following information is submitted pursuant to Section 63.04 of the Commission’s rules:

(a)(1) See response to Section II(a) above for the names, addresses, and telephone numbers of the Parties.

(a)(2) See response to Section II(b) above for the state laws under which the Parties are organized.

(a)(3) See response to Section II(c) above for the contact information to whom correspondence concerning this application is to be addressed.

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<sup>19</sup> See 21 U.S.C. § 853(a).

(a)(4) See response to Section II (h) above for a list of persons or entities that directly or indirectly own at least 10 percent of the equity of Level 3, and the percentage of equity owned by each of those entities.

(a)(5) See response to Section II (o) above regarding the certification that no party to this application is subject to a denial of federal benefits under the Anti-Drug Abuse Act of 1988, as amended.

(a)(6) A complete description of the transaction is set forth above in Section I.

(a)(7) Telecom provides private line and other interstate services throughout the U.S. pursuant to its blanket domestic Section 214 authorization. Level 3 is engaged in the provision of domestic and international communications and information services throughout the United States. To the extent Level 3 offers domestic interstate common carrier services (including private line services), it does so pursuant to its blanket domestic Section 214 authorization under Section 63.01 of the Commission's rules.

(a)(8) The request for consent to transfer control of Telecom's domestic common carrier lines to Level 3 qualifies for presumptive streamlined processing under Section 63.03(b) of the Commission's rules because it will not create any acquisition-specific effects in any local exchange market. Under the proposed transaction, Level 3 will continue to have a market share in the interstate, interexchange market of less than ten percent.<sup>20</sup> Level 3 does not provide competitive telephone exchange services or exchange access services in the areas served by Commonwealth, and all areas where Level 3 provides such services are served by a dominant

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<sup>20</sup> See 47 C.F.R. § 63.03(b)(2).

local exchange carrier that is not a party to the transaction.” And except for Level 3’s attributable interest in Commonwealth, neither Party is dominant with respect to any service.”

(a)(9) Filed concurrently with this application are the following related applications: (1) an application to assign an Industrial/Business Pool, Conventional license from Telecom to Level 3; and (2) an application to assign two Microwave Industrial/Business Pool licenses from Solutions to Level 3.

(a)(10) The Parties are requesting special consideration because Genuity and Telecom are currently subject to bankruptcy protection under Chapter 11 of the Bankruptcy Code, and a prompt grant of this application will ensure a seamless *transition of* Telecom’s customers to Level 3 without service interruption.

(a)(11) The Parties have not filed any waiver requests in conjunction with this transaction.

(a)(12) The proposed transaction will yield affirmative public interest benefits. Grant of this application will ensure a seamless transition of Telecom’s subscriber base to another provider without service interruption, which otherwise will not be assured. Moreover, timely Commission consent to this transaction will be necessary for the Bankruptcy Court to be able to maximize the amounts received by Genuity’s creditors. Furthermore, Level 3’s acquisition of Telecom’s international Section 214 authorization for global facilities-based and

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<sup>21</sup> See *id.*

<sup>22</sup> See *id.*, § 63.03(b)(2)(i).

global resale services and Genuity's other assets (including *non-common* carrier assets) will allow Level 3 to develop and offer additional services to U.S. customers.

## CONCLUSION

The Parties respectfully request that the Commission grant this application for consent to assign the Genuity assets described herein, including Telecom's international Section 214 global authorization, and to transfer control of the blanket domestic Section 214 authorization held by Telecom to Level 3. In the event that any of Telecom's common carrier customers are not transferred to Level 3, Telecom hereby requests residual authority to continue serving those customers

Respectfully submitted,

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By: \_\_\_\_\_  
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Date: December 16, 2002

## CONCLUSION

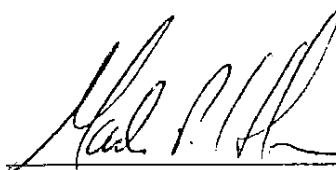
The Parties respectfully request that the Commission grant this application for consent to assign the assets noted above, including Telecom's international Section 214 global authorization, and to transfer control of the blanket domestic Section 214 authorization held by 'Telecom to Level 3. In the event that any of Telecom's common carrier customers are not transferred to Level 3, Telecom hereby requests residual authority to continue serving those customers.

Respectfully submitted,

By

\_\_\_\_\_  
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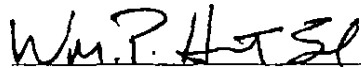
Date: December 16, 2002



## CERTIFICATION

I, William P. Hunt III, Vice President of Public Policy for Level 3 Communications, LLC ("Level 3"), hereby certify that:

1. Level 3 is affiliated with the following foreign carriers: (1) Level 3 Communications S.A. (Belgium); (2) Level 3 Communications S.A. (France); (3) Level 3 Communications GmbH (Germany); (4) Level 3 Communications B.V. (the Netherlands); (5) Level 3 Communications AG (Switzerland); and (6) Level 3 Communications Limited (United Kingdom) (collectively, the "Foreign Carrier Affiliates"). All of these Foreign Carrier Affiliates are located in destination markets that are World Trade Organization Members.
2. Level 3 seeks to provide international telecommunications services from the United States to the destination countries listed in Paragraph (1) above in which an entity that owns more than 28 percent of, or controls, Level 3 controls a foreign carrier in that country.
3. Level 3 has not agreed to accept special concessions directly or indirectly from any foreign carrier with respect to any U.S. international route where the foreign carrier possesses market power on the foreign end of the route and will not enter into any such agreements in the future.
4. Neither Level 3, nor any party to this application, is subject to a denial of federal benefits under Section 5301 of the Anti-Drug Abuse Act of 1988, as amended.



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